CIVIL LITIGATION

1. **In what language(s) may court proceedings be conducted? What arrangements can be made for translation/interpreter services?**

   Court proceedings in France are exclusively conducted in French. This means that briefs submitted to the Court and hearings are conducted in French, and exhibits drafted in foreign language must be translated into French. In most cases, translation does not need to be sworn, although a sworn translation is always preferable.

   Sworn translations are performed by judicial experts before Courts of appeal. Each Court of appeal has its own list of judicial experts comprising certified translators.

   Since it is mandatory to be represented by a French lawyer before most civil courts, there is no need to arrange for an interpreter since the lawyer will defend the client's position before the Court.

2. **What types of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?**

   Typically, before starting an action in commercial and civil matters, a formal notice is sent by registered mail to the other party, whereby it is formally requested to perform its obligations. Such formal notice is important because legal interests start to accrue as from the date of its receipt. It is also valuable in order to evidence the formal position of a party and start building a case.

   In some specific proceedings, such formal notice is required by law before starting an action.

   In addition, it is possible to carry out interim measures in order to safeguard one's rights. These *ex parte* proceedings are conducted before a specific judge and purport to authorize the requesting party to carry out seizures of its debtor's goods (for example, bank accounts), pending the outcome of proceedings on the merits.

   This specific judge will grant such authorization under the conditions that (i) the debt appears to exist, on a *prima facie* basis, and (ii) in the presence of circumstances threatening the recovery of such debt.

   If the judge grants its approval, the seized sums are rendered unavailable and the requesting party has one month, as from the date of the interim measure, to start an action on the merits, or the interim measure will become void.

3. **What are the costs of civil and commercial proceedings? Who bears the costs?**

   In France, the lawyer's fees are freely agreed upon by the lawyer and his client. It is not possible to provide for success fees only, there must be a significant fixed part.

   French law differentiates costs of the proceedings *per se* and legal fees (i.e., mainly lawyer's fees).

   The costs of proceedings in France are not high – a few hundred Euros at most – and they are usually borne by the losing party, although it is sometimes shares between the parties.

   The losing party is also usually sentenced to bear part of the legal fees of the other party.

   Before the *Tribunal de grande instance* (civil proceedings), where it is mandatory to be represented by a local lawyer, the losing party may also be sentenced to pay a specific fee calculated proportionally to the amount at stake.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

Under French law, the basic rule is that each party discloses its own evidence, in a fully discretionary way, except for confidential or privileged documents or information.

Such evidence must be filed before the competent jurisdiction. All evidence filed before the competent jurisdiction must also be communicated to all parties in the proceedings.

French jurisdictions are increasingly implementing electronic disclosure of judicial documents and exhibits, although at this stage, disclosure of documents is mainly carried out physically.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

Generally speaking, testimony in civil and commercial proceedings is carried out by means of written affidavits which must follow certain formal conditions in order to be valid. False affidavit is obviously a criminal offence.

Civil and commercial courts may request a witness to attend a hearing and give oral evidence, although it is quite rare and is not as structured as in Common Law systems (e.g., there is no such thing as examination and cross-examination of the witness). The courts however cannot compel a witness to appear before them.

Usually, in civil proceedings, only the lawyers are heard by the Court. In commercial proceedings, which are more flexible, there may be direct exchanges between the Court and the parties themselves.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e: may not be disclosed to the court)?

The principle is that parties are free to choose the way to negotiate and settle their dispute.

However, generally speaking, settlement discussions are carried out through the parties' lawyers (whether orally or by writing). In any case, such oral and written exchanges between lawyers are privileged and may not be used by the other party in pending or subsequent proceedings.

7. How can foreign judgments be enforced?

Foreign judgments may be recognized and enforced in France. It must be distinguished between judgments rendered with the European Union (EU) and those rendered in jurisdictions located outside the EU.

Enforcement of judicial decisions within the EU is regulated by Council Regulation (EC) No.44/2001 of 22 December 2000 on jurisdiction and enforcement of judgments in civil and commercial matters (the 'Brussels I Regulation'), which applies in all civil and commercial matters, except in some limited matters (e.g., wills and succession, bankruptcy, arbitration, etc.)

Enforcement of judgment rendered inside EU is done in France by a request sent to the Secretary of the *Tribunal de grande instance*. It is not necessary to have a lawyer filing such request. The judge ruling on the request for enforcement of judgments rendered within the

EU cannot review the substance of the foreign judgment or the substantive law applied by the jurisdiction. The judge may only refuse to grant enforcement on the basis of limited grounds (i.e., if the foreign judgment breached exclusive rules of jurisdiction set out in chapter II of the Brussels I Regulation, French international public policy or due process; in case of lack of enforceability of the judgment in its member state of origin; if the foreign judgment is irreconcilable with a judgment rendered in France between the same parties or with a foreign judgment between the same parties and regarding the same matter already recognized in France).

The applicant for exequatur of a foreign judgment rendered outside the EU must summon the respondent before the *Tribunal de grande instance* by means of a writ of summons served by a bailiff upon the respondent who should then appoint an attorney. A writ must also be served on the public prosecutor. In such case, the judge must apply three criteria to decide whether to grant exequatur or not (i.e., indirect jurisdiction of the foreign judge, compliance with international public policy – with respect to both procedural and substantive law – and absence of fraud).

ARBITRATION

1. Are mediation clauses in commercial contracts binding and enforceable?

Mediation clauses inserted in commercial contracts are binding and enforceable, like any other contractual provision.

2. What is the procedure for mediation? Is it a popular method for resolving commercial disputes?

Generally speaking, a French judge may always – if the parties agree – appoint a mediator in order to reach a solution to the dispute. This mediation is increasingly suggested by the courts before rendering their decision.

Besides, there are several specific proceedings where pre-conciliation of the parties is mandatory (e.g., in labor law proceedings).

It should be noted that an ordinance n°2011-1540 dated 16 November 2011 has recently applied in France the European Directive n°2008/52/CE dated 21 May 2008 regarding certain aspects of civil and commercial mediation. This ordinance reinforces the general framework of both judicial and contractual mediations (which was not yet recognized by law). This should pave the way to a broader use of mediation in France.

3. Are arbitration clauses in commercial contracts binding and enforceable?

Arbitration clauses inserted in commercial contracts are binding and enforceable.

French law expressly states that the arbitration clause is independent from the contract it is contained therein. This means that the arbitration clause stands even if the contract is cancelled as a whole.

4. What type of arbitration is commonly used for resolving commercial disputes: ad hoc arbitration or institutional arbitration?

In France, both *ad hoc* and institutional arbitration are commonly used. It is difficult to assess which type of arbitration is favored in practice, especially considering the relatively secret nature of arbitration.

5. Which arbitration institutes are most popular?

The most popular arbitration institute referred to in commercial contracts is the International

Chamber of Commerce (ICC) of Paris (especially in international contracts).

6. What influence can the parties have on the identity of the arbitrator(s)?

Arbitration being a contractual method of dispute resolution, the parties commonly agree on the appointment of the arbitrator(s).

If they do not reach an agreement on the name of arbitrator(s) – and if they did not agree on a method of appointment – the French Code of Civil procedure provides for specific rules in that respect. *In fine*, a French judge has the power to appoint the arbitrator(s). This only applies if the arbitration is purely domestic, or if the parties have agreed to the seat of arbitration to be located in France or if the parties have decided to apply French procedural law to the arbitration proceedings.

7. In what language is an arbitration proceedings conducted?

Domestic arbitration proceedings are conducted in French.

As regards international arbitration, the language of the proceedings depends on what the parties have chosen. They are indeed perfectly free to choose the language applying to the arbitration proceedings.

8. What types of pre-arbitration measures are available and what are their limitations?

Like in proceedings before national courts, it is possible to carry out interim measures in order to safeguard one's rights. These ex parte proceedings are conducted before a specific judge and purport to authorize the requesting party to carry out seizures of its debtor's goods (for example, bank accounts), pending the outcome of arbitration proceedings.

This specific judge will grant such authorization under the conditions that (i) the debt appears to exist, on a prima facie basis, and (ii) in the presence of circumstances threatening the recovery of such debt.

If the judge grants its approval, the seized sums are rendered unavailable and the requesting party has one month, as from the date of the interim measure, to start arbitration, or the interim measure will become void.

Some institutional arbitration rules, like the ICC Rules of Arbitration (as of 2012), provides for the possibility to request from the arbitral tribunal, or any competent judicial authority, to order interim measures.

9. What are the costs of arbitration proceedings and who bears these costs?

This very much depends on what the parties have agreed and on the institutional rules applying to the arbitration proceedings.

Arbitrator(s)'s fees are usually calculated in consideration of the amount at stake.

Typically, each party bears its own arbitration costs, unless the arbitral tribunal sentences a party to bear part or all of the procedural costs.

10. What are the basic rules of document disclosure in arbitration? Which documents do not require disclosure?

This depends on the rules applying to the arbitration proceedings or to the production of evidence.

As regards domestic arbitration, the rules are similar to that of French procedural law, i.e., each party discloses its own evidence, in a fully discretionary way, except for confidential or privileged documents or information.

There are no disclosure duties for the parties, except if the arbitral tribunal enjoins a party to disclose a specific piece of evidence it holds.

11. What is the procedure for witness evidence in arbitration (namely, is it deposition based or witness examination or cross-examination)?

Again, this depends on the rules applying to the arbitration proceedings.

As regards domestic arbitration, the rules are similar to that of French procedural law. The arbitral tribunal may hear any person it deems necessary.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e., may not be disclosed to the Arbitrator)?

Again, the principle is that parties are free to choose the way to negotiate and settle their dispute.

However, generally speaking, settlement discussions are carried out through the parties' lawyers (whether orally or by writing). In any case, such oral and written exchanges between lawyers are privileged and may not be used by the other party in pending or subsequent arbitration proceedings.

13. Under what circumstances can an Arbitration Award be enforced, challenged or annulled?

Arbitration awards can be enforced in France provided that they receive exequatur.

Enforcement of arbitral awards is performed by a request for exequatur before the competent *Tribunal de grande instance*. Such proceedings are *ex parte*. Enforcement can be granted if the two following conditions are met:

- if the party relying on a foreign award can prove its existence; and
- if such recognition or enforcement is not obviously contrary to international public policy.

The documentary requirements for enforcement of a foreign arbitral award are the following:

- the original award or its duly authenticated copy (i.e., copy certified by the arbitral institution);
- the original of the arbitration agreement on the basis of which the award was rendered, or its duly authenticated copy;
- translation into French if documents are in a language other than French (such translation does not need to be sworn).

The decision granting exequatur may be appealed.

Arbitration award cannot be challenged by way of a traditional appeal on the merits, unless in purely domestic arbitration and if the parties agree.

However, the parties may lodge against the award a specific cancellation appeal before the competent French Court of appeal, only if the arbitration is purely domestic, or if the parties have agreed to the seat of arbitration to be located in France. In such case, the review of the Court of appeal will only be limited to certain formal grounds of cancellation (i.e., jurisdiction or constitution of the arbitral tribunal, due process, etc.)

Such cancellation appeal (or the appeal of the decision granting exequatur) does not suspend the enforcement of the award which has received exequatur.

In addition, an arbitration award rendered abroad and annulled by a judicial authority of its country of origin may receive exequatur in France provided that it meets its conditions.